



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

September 1, 1998

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OR98-2082

Dear Mr. Kelly, Ms. Ohlendorf and Mr. Mellinger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID#s 116922, 116993, and 117000. We have combined these files and consider the issues presented in this single ruling assigned ID# 116922.

Texas A&M University ("Texas A&M"), Texas Tech University ("Texas Tech") and the University of Texas received two requests for copies of a report prepared by the law firm of Shook, Hardy & Bacon, L.L.P. ("SHB") regarding allegations of workplace harassment at the headquarters of the Big Twelve Conference (the "Conference"). Texas A&M received an additional request for all correspondence between and among the Directors of the Conference and others relating to the Conference and its Commissioner, Steve Hatchell. Although Texas Tech and the University of Texas do not possess copies of the responsive documents, all three universities and SHB argue that the report and the related

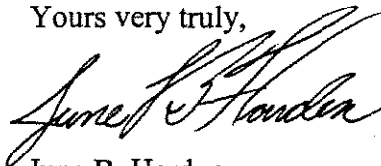
correspondence are not "public information" as defined by the Open Records Act (the "act"). Alternatively, SHB argues that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.111 of the Government Code. We have considered the arguments presented and reviewed the submitted information.

Chapter 552 defines public information as that which is collected, assembled, or maintained under a law or ordinance, or in connection with the transaction of official business (1) by a governmental body or (2) for a governmental body and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002. Information is generally subject to chapter 552 when it is held by a governmental body and relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. Open Records Decision No. 635 (1995). You explain that the Conference is a non-profit corporation that operates much like one of its predecessors, the Southwest Conference (the "SWC"). We note that the Fifth Circuit Court of Appeals has held that the NCAA and the SWC are not governmental bodies within the intent of the act. *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1998).

You also explain that Dr. Ray Bowen authorized and received the requested information solely in his capacity as Chairman of the Conference, not in his official capacity as President of Texas A&M. Furthermore, you explain that the other presidents of the member institutions only possessed the requested information in their capacities as Conference Directors and were required to return the requested report following an April 1998 meeting of the Board of Directors. Finally, you argue, and the records indicate, that the requested information relates solely to the personnel matters of the Conference, and not its member institutions. We conclude that the requested information does not relate to the official business of a governmental body. It is also not information used by a public employee in his official capacity. Consequently, the requested information is not "public information" as defined by the section 552.002 of the act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

Ref.: ID# 116922

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